

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

HOPE KOCH, et al.,

Plaintiffs,

V.

JOHN R. HICKS, et al.,

Defendants.

* * * * *

**EXXON MOBIL CORPORATION'S MOTION FOR LEAVE TO FILE SURREPLY
TO PLAINTIFFS' MOTIONS TO REMAND**

Pursuant to Local Rule 105.2.a, defendant Exxon Mobil Corporation (“ExxonMobil”), by its undersigned counsel, respectfully asks that the Court grant it leave to file a surreply to the two motions to remand filed by plaintiffs Hope Koch and Frank Koch (the “Kochs”).

In their reply to ExxonMobil's opposition, the Kochs raise, for the first time, the argument that this case should be remanded because ExxonMobil failed to file, with the notice of removal, a copy of the Maryland writ of summons served on codefendant John R. Hicks, allegedly in contravention of 28 U.S.C. § 1446(a). ExxonMobil filed the notice of removal of this action on October 15, 2004. The Kochs filed their reply on November 19, 2004.

By waiting more than thirty days to raise their novel argument, the Kochs have waived their right to make it. *See* 28 U.S.C. § 1447(c) (“A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a).”); *N. Cal. Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034, 1038

(9th Cir. 1995) (holding that “§ 1447(c) prohibits a defect in removal procedure being raised later than 30 days after the filing of the notice of removal, regardless ... whether a timely remand motion has been filed.”).

Accordingly, to address the Kochs’ new-found, but untimely argument to support their motions to remand, ExxonMobil requests leave to file the surreply attached to this motion as Exhibit 1.

Dated: December 1, 2004

Respectfully submitted,

/s/_____
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